

Introduced by Senator Schiff

February 20, 1998

An act to amend Sections 213.5 and 241.1 of, and to add Sections 726.5 and 728 to, the Welfare and Institutions Code, relating to juvenile court law.

LEGISLATIVE COUNSEL'S DIGEST

SB 2017, as introduced, Schiff. Juvenile court dependents and wards: orders.

Under existing law, after a petition has been filed to declare a child a dependent child of the juvenile court, the court may issue ex parte orders enjoining any parent or other specified persons from molesting, attacking, sexually assaulting, or battering the child or another child in the household. Violation of any such order is a misdemeanor.

This bill would permit the court, after a petition has been filed to declare a child a ward of the court, to issue ex parte orders enjoining any parent or other specified persons from committing any of those specified acts against the child or enjoining the child from contacting, threatening, stalking, or disturbing the peace of another person, as specified. Violation of the order would be a misdemeanor. The bill would also add stalking to the list of acts that may be enjoined in dependency proceedings.

Existing law requires the county probation department and the county welfare department to make recommendations to the juvenile court regarding the status that would best serve the interests of a minor when it appears that the minor may come within the description of both a dependent and a ward

of the court. These recommendations are to be presented to the court with the petition that is filed on the minor's behalf.

This bill would require the court to give notice of the presentation of the departmental recommendations to any other juvenile court having jurisdiction over the minor, as specified.

Existing law provides that, with respect to children who have been adjudged a ward or dependent child of the court, the court may issue orders limiting the control exercised over the ward or dependent child by any parent or guardian. Existing law also authorizes the court to issue any and all other reasonable orders for the care, supervision, custody, conduct, maintenance and support of a ward of the court.

This bill would provide that, when a child is declared a ward of the court and proceedings are pending for dissolution of marriage of the child's parents, or to establish custody or paternity of the child, the juvenile court may issue the above-described ex parte orders and may issue orders determining the parentage, custody of, or visitation with, the child, subject to specified procedures and criteria. The bill would also authorize the juvenile court to appoint a guardian of the person, and to modify or terminate a guardianship previously established in the probate court, for a child who is a dependent child or ward of the court.

Because this bill would impose new duties on local officials and court personnel, and would expand the definition of a crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state,



reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 213.5 of the Welfare and
2 Institutions Code is amended to read:
3 213.5. (a) After a petition has been filed pursuant to
4 Section 311 to declare a child a dependent child of the
5 juvenile court, and until the time that the petition is
6 dismissed or dependency is terminated, upon application
7 in the manner provided by Section 527 of the Code of
8 Civil Procedure, the juvenile court may issue ex parte
9 orders (1) enjoining any parent, guardian, or current or
10 former member of the child's household from molesting,
11 attacking, striking, sexually assaulting, *stalking*, or
12 battering the child or any other child in the household;
13 (2) excluding any parent, guardian, or current or former
14 member of the child's household from the dwelling of the
15 person who has care, custody, and control of the child; and
16 (3) enjoining a parent, guardian, or current or former
17 member of the child's household from ~~—specified~~
18 behavior, including contacting, threatening, or
19 disturbing the peace of the child, ~~which~~ *that* the court
20 determines is necessary to effectuate orders under
21 paragraph (1) or (2).
22 (b) *After a petition has been filed pursuant to Section*
23 *601 or 602 to declare a child a ward of the juvenile court,*
24 *and until the time that the petition is dismissed or*
25 *wardship is terminated, upon application in the manner*
26 *provided by Section 527 of the Code of Civil Procedure,*
27 *the juvenile court may issue ex parte orders (1) enjoining*
28 *any parent, guardian or current or former member of the*
29 *child's household from molesting, attacking, threatening,*
30 *sexually assaulting, stalking, or battering the child; or (2)*
31 *enjoining the child from contacting, threatening,*
32 *stalking, or disturbing the peace of any person the court*

1 *finds to be at risk from the conduct of the child, or with*
2 *whom association would be detrimental to the child.*

3 (c) In the case in which a temporary restraining order
4 is granted without notice, the matter shall be made
5 returnable on an order requiring cause to be shown why
6 the order should not be granted, on the earliest day that
7 the business of the court will permit, but not later than 15
8 days or, if good cause appears to the court, 20 days from
9 the date the temporary restraining order is granted. The
10 court may, on the motion of the person seeking the
11 restraining order, or on its own motion, shorten the time
12 for service on the person to be restrained of the order to
13 show cause. Any hearing pursuant to this ~~statute~~ *section*
14 may be held simultaneously with ~~the~~ *any* regularly
15 scheduled hearings held in proceedings to declare a child
16 a dependent child *or ward* of the juvenile court pursuant
17 to Section 300, 601, or 602, *or subsequent hearings*
18 *regarding the dependent child or ward.*

19 ~~(b)~~

20 (d) The juvenile court may issue, upon notice and a
21 hearing, any of the orders set forth in ~~subdivision~~
22 *subdivisions* (a), (b), and (c). Any restraining order
23 granted pursuant to this subdivision shall remain in effect,
24 in the discretion of the court, not to exceed one year,
25 unless otherwise terminated by the court, extended by
26 mutual consent of all parties to the restraining order, or
27 extended by further order of the court on the motion of
28 any party to the restraining order.

29 ~~(e)~~

30 (e) (1) The juvenile court may issue an order made
31 pursuant to subdivision (a), ~~or~~ (b), (c), *or* (d) excluding
32 a person from a residence or dwelling. This order may be
33 issued for the time and on the conditions that the court
34 determines, regardless of which party holds legal or
35 equitable title or is the lessee of the residence or dwelling.

36 (2) The court may issue an order under paragraph (1)
37 only on a showing of all of the following:

38 (A) Facts sufficient for the court to ascertain that the
39 party who will stay in the dwelling has a right under color
40 of law to possession of the premises.

1 (B) That the party to be excluded has assaulted or
2 threatens to assault the other party or any other person
3 under the care, custody, and control of the other party, or
4 any minor child of the parties or of the other party.

5 (C) That physical or emotional harm would otherwise
6 result to the other party, to any person under the care,
7 custody, and control of the other party, or to any minor
8 child of the parties or of the other party.

9 ~~(d)~~

10 (f) Any order issued pursuant to subdivision (a), ~~or~~
11 (b), (c), *or* (d) shall state on its face the date of expiration
12 of the order.

13 ~~(e)~~

14 (g) The juvenile court shall order any designated
15 person or attorney to mail a copy of any order, or
16 extension, modification, or termination thereof, granted
17 pursuant to subdivision (a), ~~or~~ (b), (c), *or* (d), by the
18 close of the business day on which the order, extension,
19 modification, or termination was granted, and any
20 subsequent proof of service thereof, to each local law
21 enforcement agency designated by the person seeking
22 the restraining order or his or her attorney having
23 jurisdiction over the residence of the person who has care,
24 custody, and control of the child and other locations
25 where the court determines that acts of domestic
26 violence or abuse against the child or children are likely
27 to occur. Each appropriate law enforcement agency shall
28 make available through an existing system for
29 verification, information as to the existence, terms, and
30 current status of any order issued pursuant to subdivision
31 (a), ~~or~~ (b), (c), *or* (d) to any law enforcement officer
32 responding to the scene of reported domestic violence or
33 abuse.

34 ~~(f)~~

35 (h) Any willful and knowing violation of any order
36 granted pursuant to subdivision (a), ~~or~~ (b), (c), *or* (d)
37 shall be a misdemeanor punishable under Section 273.65
38 of the Penal Code.

39 SEC. 2. Section 241.1 of the Welfare and Institutions
40 Code is amended to read:

1 241.1. (a) Whenever a minor appears to come within
2 the description of both Section 300 and Section 601 or 602,
3 the county probation department and the county welfare
4 department shall, pursuant to a jointly developed written
5 protocol described in subdivision (b), initially determine
6 which status will serve the best interests of the minor and
7 the protection of society. The recommendations of both
8 departments shall be presented to the juvenile court with
9 the petition ~~which~~ *that* is filed on behalf of the minor, and
10 the court shall determine which status is appropriate for
11 the minor. *Any other juvenile court having jurisdiction*
12 *over the minor shall receive notice from the court, within*
13 *five calendar days, of the presentation of the*
14 *recommendations of the departments. The notice shall*
15 *include the name of the judge to whom, or the courtroom*
16 *to which, the recommendations were presented.*

17 (b) The probation department and the welfare
18 department in each county shall jointly develop a written
19 protocol to ensure appropriate local coordination in the
20 assessment of a minor described in subdivision (a), and
21 the development of recommendations by these
22 departments for consideration by the juvenile court.
23 These protocols shall require, which requirements shall
24 not be limited to, consideration of the nature of the
25 referral, the age of the minor, the prior record of the
26 minor's parents for child abuse, the prior record of the
27 minor for out-of-control or delinquent behavior, the
28 parents' cooperation with the minor's school, the minor's
29 functioning at school, the nature of the minor's home
30 environment, and the records of other agencies which
31 have been involved with the minor and his or her family.
32 The protocols also shall contain provisions for resolution
33 of disagreements between the probation and welfare
34 departments regarding the need for dependency or ward
35 status and provisions for determining the circumstances
36 under which a new petition should be filed to change the
37 minor's status.

38 (c) Nothing in this section shall be construed to
39 authorize the filing of a petition or petitions, or the entry
40 of an order by the juvenile court, to make a minor

1 simultaneously both a dependent child and a ward of the
2 court.

3 SEC. 3. Section 726.5 is added to the Welfare and
4 Institutions Code, to read:

5 726.5. (a) At any time when (1) the minor is a ward
6 of the juvenile court under Section 725, or the court
7 terminates wardship while the minor remains under the
8 age of 18 years, and (2) proceedings for dissolution of
9 marriage, for nullity of marriage, or for legal separation
10 of the minor's parents, proceedings to determine custody
11 of the child, or to establish paternity of the minor under
12 the Uniform Parentage Act, Part 3 (commencing with
13 Section 7600) of Division 12 of the Family Code are
14 pending in the superior court of any county, or an order
15 has been entered with regard to the custody of the minor,
16 the juvenile court may issue a protective order as
17 provided in Section 213.5 or as defined in Section 6218 of
18 the Family Code and may issue an order determining
19 parentage, custody of, or visitation with, the minor.

20 A custody or visitation order issued by the juvenile
21 court pursuant to this subdivision shall be made in
22 accordance with the procedures and criteria of Part 2
23 (commencing with Section 3020) of Division 8 of the
24 Family Code. An order determining parentage issued by
25 the juvenile court pursuant to this subdivision shall be
26 made in accordance with the procedures and
27 presumptions of the Uniform Parentage Act, Part 3
28 (commencing with Section 7600) of Division 12 of the
29 Family Code.

30 (b) Any order issued under this section shall continue
31 until modified or terminated by a subsequent order of the
32 juvenile court. The order of the juvenile court shall be
33 filed in the proceeding for nullity, dissolution, or legal
34 separation, or in the proceeding to determine custody or
35 to establish paternity, if that proceeding is pending at the
36 time the juvenile court terminates its jurisdiction over the
37 minor. The order shall then become a part of that
38 proceeding and may be terminated or modified as the
39 court in that proceeding deems appropriate.

1 (c) If no action is filed or pending relating to the
2 custody of the minor in the superior court of any county
3 at the time the juvenile court terminates its jurisdiction
4 over the minor, the juvenile court order awarding
5 custody, entered pursuant to subdivision (a), may be used
6 as the sole basis for opening a file in the superior court of
7 the county in which the parent who has been awarded
8 physical custody resides. The clerk of the juvenile court
9 shall transmit the order to the clerk of the superior court
10 of the county in which the order is to be filed. The clerk
11 of the superior court shall, upon receipt, open a file,
12 without a filing fee, and assign a case number.

13 (d) The clerk of the superior court shall, upon the
14 filing of any juvenile court custody order pursuant to
15 subdivision (c), send by first-class mail a copy of the order
16 with the case number, to the juvenile court and to the
17 parents at the address listed on the order.

18 (e) The Judicial Council shall adopt forms for orders
19 issued under this section. These orders shall not be
20 confidential.

21 SEC. 4. Section 728 is added to the Welfare and
22 Institutions Code, to read:

23 728. (a) The juvenile court may terminate or modify
24 a guardianship of the person of a child previously
25 established under the Probate Code, or appoint a
26 coguardian or successor guardian of the person of the
27 child, if the child is the subject of a petition filed under
28 Section 300, 601, or 602. If the probation officer
29 supervising the minor provides information to the court
30 regarding the child's present circumstances and makes a
31 recommendation to the court regarding a motion to
32 terminate or modify a guardianship established in any
33 county under the Probate Code, or to appoint a
34 coguardian or successor guardian, of the person of a child
35 who is before the juvenile court under a petition filed
36 under Section 300, 601, or 602, the court shall order the
37 appropriate county department, or the district attorney
38 or county counsel, to file the recommended motion. The
39 motion may also be made by the guardian or the minor's
40 attorney. The hearing on the motion may be held



1 simultaneously with any regularly scheduled hearing
2 held in proceedings to declare the child a dependent
3 child or ward of the court, or at any subsequent hearing
4 concerning the dependent child or ward. Notice
5 requirements of Section 1511 of the Probate Code shall
6 apply to the proceedings in juvenile court under this
7 subdivision.

8 (b) If, at any time during the period a minor under the
9 age of 18 years is a ward of the juvenile court, the
10 probation officer supervising the minor recommends to
11 the court that the court establish a guardianship of the
12 person of the minor and appoint a specific adult to act as
13 guardian, or on the motion of the minor's attorney, the
14 court shall set a hearing to consider the recommendation
15 or motion and shall order the clerk to notice the child's
16 parents and relatives as required in Section 1511 of the
17 Probate Code. If the motion is not made by the minor's
18 attorney, the court may appoint the district attorney or
19 county counsel to prosecute the action.

20 (c) At the hearing described in subdivision (b), the
21 court shall determine if the appointment of a guardian of
22 the person of the minor appears necessary or convenient,
23 and is consistent with the rehabilitation and protection of
24 the minor and with public safety, and if the court so
25 determines, it shall appoint a guardian of the person of
26 the minor and order that letters of guardianship issue
27 pursuant to the standards and procedures specified in the
28 Probate Code.

29 (d) Upon the appointment of a guardian pursuant to
30 subdivision (c), the court may continue wardship and
31 conditions of probation, or may terminate the wardship
32 of the minor.

33 (e) Notwithstanding Section 1601 of the Probate
34 Code, the proceedings to modify or terminate a
35 guardianship granted under this section shall be held in
36 the juvenile court unless the termination is due to the
37 emancipation or adoption of the minor.

38 (f) The Judicial Council shall develop rules of court
39 and adopt appropriate forms for the findings and orders
40 under this section.

1 SEC. 5. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution for certain costs that may be incurred by a
4 local agency or school district because in that regard this
5 act creates a new crime or infraction, eliminates a crime
6 or infraction, or changes the penalty for a crime or
7 infraction, within the meaning of Section 17556 of the
8 Government Code, or changes the definition of a crime
9 within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

11 However, notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains other costs mandated by
14 the state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

